

Nguyen (Migration) [2023] AATA 1534 (9 March 2023)

DECISION RECORD

DIVISION: Migration & Refugee Division

APPLICANT: Ms Thi Thuy An Nguyen

REPRESENTATIVE: Mr Duc-Dung Tran (MARN: 0319577)

CASE NUMBER: 1835709

HOME AFFAIRS REFERENCE(S): BCC2017/4758235

MEMBER: M. Edgoose

DATE OF ORAL DECISION: 9 March 2023

DATE OF WRITTEN STATEMENT: 22 March 2023

PLACE OF DECISION: Melbourne

DECISION: The Tribunal affirms the decision not to grant the applicant a Partner (Temporary) (Class UK) visa.

Statement made on 22 March 2023 at 5:12pm

CATCHWORDS

MIGRATION – Partner (Temporary) (Class UK) visa – Subclass 820 (Partner) – sponsor deceased – genuine spousal relationship – financial aspects – nature of the household – social aspects – nature of the commitment – decision under review affirmed

1.

LEGISLATION

Migration Act 1958 (Cth), ss 5F, 65

Migration Regulations 1994 (Cth), r 1.15A; Schedule 2, cl 820.221

CASES

He v MIBP [2017] FCAFC 206

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

2. This is an application for review of a decision made by a delegate of the Minister for Home Affairs to refuse to grant the applicant a Partner (Temporary) (Class UK) visa under s 65 of the *Migration Act 1958* (Cth) (the Act).
3. The applicant applied for the visa on 13 December 2017 on the basis of her relationship with her sponsor. At that time, Class UK contained only one subclass: Subclass 820 (Partner). The criteria for the grant of this visa are set out in Part 820 of Schedule 2 to the *Migration Regulations 1994* (Cth) (the Regulations). The primary criteria must be satisfied by at least one applicant. Other members of the family unit, if any, who are applicants for the visa need satisfy only the secondary criteria.
4. The delegate refused to grant the visa on the basis that the visa applicant did not satisfy cl 820.211(2)(a).
5. The Tribunal gave its decision on the review at the conclusion of the hearing held on 9 March 2023. The following are the reasons for that decision.
6. The applicant appeared before the Tribunal on 9 March 2023 to give evidence and present arguments. The Tribunal also received oral evidence from Mr Michael O'Grady a neighbour, Ms Thi T Hang Nguyen the applicant's best friend for around 5 years, Ms Thi Sau Duong also one of the applicant's best friend for around 5 years, Ms Lai H. Hong the applicant's cleaner and Ms Quach a friend of the applicant. Tribunal hearing was conducted with the assistance of an interpreter in the Vietnamese and English languages.
7. The Tribunal was informed by the representative on 24 January 2023 that Mr Kiang Cuong Hong, the sponsor had passed away on 23 January 2023.
8. The applicant was represented in relation to the review. The representative attended the Tribunal hearing.
9. For the following reasons, the Tribunal has concluded that the decision under review should be affirmed.

CONSIDERATION OF CLAIMS AND EVIDENCE

10. Clauses 820.211(2)(a) require that at the time the visa application was made, the applicant is the spouse or de facto partner of an Australian citizen or Australian permanent resident or an eligible New Zealand citizen. In the present case the applicant claims to be the spouse of the sponsor who is an Australian citizen.
11. 'Spouse' is defined in s 5F of the Act and provides that a person is the spouse of another where the two persons are in a married relationship. Persons in a married relationship must be married to each other under a marriage that is valid for the purposes of the Act, there must be a mutual commitment to a shared life as a married couple to the exclusion of all others, the relationship must be genuine and continuing, and the couple must live together, or not live separately and apart on a permanent basis: s 5F(2)(a)-(d). In forming an opinion about these matters, regard must be had to all of the circumstances of the relationship. This includes evidence of the financial and social aspects and the nature of the parties' household and their commitment to each other as set out in reg 1.15A(3), which is extracted

in the attachment to this decision. Each of the specific matters contained in reg 1.15A(3) are effectively questions which must be answered: *He v MIBP* [2017] FCAFC 206.

Are the parties validly married?

12. If the parties are validly married, they may meet the requirements of a married relationship, but not a de facto relationship. The applicant submitted to the Department a copy of the marriage certificate dated 9 December 2017. On the evidence, the parties were married to each other under a marriage that is valid for the purposes of the Act as required by s 5F(2) (a).

13. Background of the sponsor

14. The sponsor was born on 16 January 1933 and passed away on 23 January 2023 at the age of 93. The sponsor had been married to his ex-wife, Mrs Chan Ha Thuc born 28 April 1932, for 65 years.
15. The couple had nine children who were born between 1958 and 1974.
16. After 65 years of marriage the couple finalised their divorce on 21 August 2017. At the time the divorce was finalised the sponsor was 84 years and 7 months of age and the sponsor's ex-wife was 85 years and 3 months of age.

17. Background of the applicant

18. The applicant was born on 20 January 1970 and has had two previous marriages to older gentlemen.
19. Her first marriage was to Mr Van Bac Tran, born in 1940. The applicant married Mr Tran in 2004 and had one daughter from this relationship born on 29 September 2005. The relationship ended in divorce on 3 July 2013. The Tribunal notes that the daughter from this relationship was not included in the visa application.
20. The applicant's second marriage was to a Mr Huu Cat Nguyen, born in 1942. The applicant married her second husband in 2014, separated in 2015 and finalised their divorce on 20 September 2017.

Are the other requirements for a spouse relationship met?

21. On 18 November 2022 the Tribunal via the applicant's representative invited the applicant to appear before the Tribunal on 16 January 2023. On 19 December 2022 the Tribunal received a postponement request for the hearing not to be hearing until the end of January 2023 due to the representative claiming
 22. Due to personal/family urgent matters the representative will still be overseas on the 16 until end of Jan 2022. Please help. Thanks.
23. On 19 December 2022 the Tribunal refused this postponement request and informed the representative that he could attend the hearing by telephone while he was overseas.
24. On 5 December 2022 the Tribunal wrote to the applicant through her representative informing her that it had a s 376 Non-Disclosure Certificate that was issued by the Department of Home Affairs on 22 November 2019. The Tribunal invited the applicant to provide submissions as to the validity of the Non-Disclosure Certificate by 19 December 2022. The applicant's representative responded to this invitation on 8 December 2022 and stated that

25. The certificate appears to be in proper form but for the failure of the Delegate to identify their APS level.

26. Based on the response from the applicant's representative the Tribunal is satisfied that the s 376 Non-Disclosure Certificate is valid. At hearing the Tribunal provided the applicant the gist of the information behind the certificate. The applicant responded by denying the information behind the certificate, that being the applicant had conned the sponsor into a fake relationship with malicious intent to conduct a fake marriage in order for the applicant to receive citizenship. The applicant informed the Tribunal that the information contained within the allegations was no true and that she and the sponsor came together due to being in similar situations. The applicant claimed she came from a family that didn't have parental care. The Tribunal gives little weight to the applicant's response regarding the allegations contained in the s 376 Non-Disclosure Certificate.

27. On 28 December 2022 the Tribunal received the hearing invitation response which stated that the representative would be participating in the in person hearing on 16 January 2023 along with the applicant, sponsor, and several witnesses.

28. On 6 January 2023 the Tribunal wrote to the applicant via her representative requesting the sponsor's nine children to provide Statutory Declaration's commenting on their father's current residential status and to provide any comments regarding the relationship between the applicant and their father. The Tribunal also welcomed the sponsor's children to attend the hearing on 16 January 2023 as witnesses should they wish to do so. The Tribunal requested the Statutory Declarations and notification of names of any of the sponsor's children attending the hearing be provided to the Tribunal by close of business on Thursday 12 January 2023.

29. On 9 January 2023 the applicant through her representative provided a response to the request for the sponsor's nine children to provide Statutory Declarations commenting on their father's current residential status and to provide any comments regarding the relationship between the applicant and their father. The applicant provided a Statutory Declaration dated 9 January 2023 stating that

30. I cannot contact them and cannot have their full support in this matter

31. Given the applicant's statement that *I cannot contact them and cannot have their full support in this matter* it became apparent to the Tribunal that the applicant appeared to not have any contact details or the ability to contact any of the sponsor's nine child, nor did she have any form of relationship with the sponsor's children.

32. On 10 January 2023 the Tribunal email the applicant through her representative requesting copies of all Power of Attorney documents (both financial and medical) in relation to the sponsor Mr Kiang Cuong Hong by close of business Thursday 12 January 2023. On 10 January 2023 the applicant through her representative submitted to the Tribunal a copy of the claimed approved Enduring Power of Attorney dated 5 May 2022. On close inspection of the claimed approved Enduring Power of Attorney that Tribunal found that this document had not been executed correctly, that being Section 6: Principal's signature had not been witnessed by two people. Section 6 of the form clearly stated *You must sign the form in front of two witnesses*. The Tribunal informed the applicant at hearing that it considered the Enduring Power of Attorney had not been executed correctly and therefore found it to be invalid. The Tribunal further noted that this invalid Enduring Power of Attorney had been used on by the applicant on several occasions. Given this the Tribunal placed no weight on the Enduring Power of Attorney in this matter.

33. On 13 January 2023 the Member postponed the scheduled hearing for 16 January 2023 and advised the applicant that a new hearing date would be set as soon as possible and that they would be notified.
34. On 20 January 2023 the Tribunal received an email from the applicant's representative acknowledging the postponement of the hearing scheduled on 16 January 2023. He also stated that he would be grateful if the Tribunal would reschedule the hearing for post 3 March 2023 as he had a person matter to attend to in Vietnam. The Tribunal acknowledged the representative's request, and that hearing took place on 9 March 2023.
35. Contained within the email from the representative on 20 January 2023 was the following statement
36. Today, the review applicant has informed that her sponsor is very sick and dying. The applicant, as suggested by the hospital, has notified his children yesterday about his critical health condition. They have met with the applicant, visited their father and amicably requested the applicant to give them the "rights to organise a funeral" for him.
37. On 9 January 2023 the applicant stated in a signed Statutory Declaration that in relation to the sponsor's nine children *I cannot contact them and cannot have their full support in this matter* however just 11 days later the applicant was able to contact the sponsor's nine children. At hearing the Tribunal put it to the applicant that she had provided misleading information in her Statutory Declaration dated 9 January 2023 regarding that she cannot contact the sponsor's nine children and therefore the Tribunal has genuine concerns about her being a credible witness. The applicant responded to the Tribunal by saying "Yes" Member I have their numbers, but they never want to support me. She further mentioned that when she and the sponsor were in the relationship, they, being the sponsor's children, would come over and upset him. The Tribunal is of the view that the applicant deliberately provided misleading information to the Tribunal in the Statutory Declaration dated 9 January 2023 given that over the time of the claimed relationship with the sponsor she had not developed any form of rapport with the sponsor's nine children and given this the Tribunal found the applicant not to be a credible witness.
38. On 24 January 2023 the applicant through her representative responded to the hearing invitation. Within the content of the email the representative informed the Tribunal that the sponsor had passed away on 23 January 2023.
39. The Tribunal received no further submissions from the applicant until the morning of the hearing on 9 March 2023. These submissions included several photographs, the funeral receipts and two signed joint typed declarations in support of the relationship between the applicant and sponsor from residents at the housing commission flats at 45 Hall Street Moonee Ponds and the friends and witnesses of the applicant. It was brought to the attention of the Member that the applicant was asking the witnesses to sign this document just prior to the start of the hearing. The Tribunal further notes that other signatures were gathered the day before the hearing on 8 March 2023. Given that the Tribunal is not able to verify the signatures and identity of most of the people on the joint declarations the Tribunal places limited weight on these submissions.
40. Further to the submissions made on the morning of the hearing the representative made his own submission. His written submission was dated 7 March 2023 and focussed on cl 801.221(5)(2). At the conclusion of the hearing the representative continued to focus on this clause. The Tribunal informed the representative that his submission was not correct as the Tribunal was only focusing on cl 820.211 time of application criteria. Given this the Tribunal places no weight on the representative's written submission made prior to the commencement of the hearing and his brief oral submission at the conclusion of the hearing.

41. At the start of the hearing the applicant was informed that the Tribunal would be referring only to the time of application criteria.
42. The applicant claimed throughout the hearing that the sponsor wanted nothing to do with his nine children as they were not supportive of the relationship. Even if the sponsor's nine children were not supportive of the relationship between the applicant and sponsor the Tribunal finds it implausible given that the sponsor did not maintain some contact with his nine children and possible grandchildren and great grandchildren. For these reasons the Tribunal places minimal weight on the applicant's claims that the sponsor wanted nothing to do with his nine children given the applicant's claims they were not supportive of their father's relationship with the applicant.
43. At hearing the Tribunal asked the applicant if the sponsor's ex-wife was still alive. The applicant responded that she was not sure if the sponsor's ex-wife was still alive. The Tribunal does not accept that the applicant would not have known if the sponsor's ex-wife was still alive or not. Given the sponsor was married to his ex-wife for 65 years and had nine children together, the Tribunal is of the view that the applicant would have known if the sponsor's ex-wife was still alive. The Tribunal did not accept the applicant's response.

44. Witnesses

45. Witness, Michael O'Grady is a neighbour of the applicant and sponsor. He claimed at hearing to have been the best man at their wedding on 9 December 2017 and that he had known the sponsor for a period before the applicant arrive. Mr O'Grady claims the sponsor was very happy when the applicant arrived in Australia and assisted them in writing letters when required. He stated that he was not sure how they kept in contact before the marriage and the visa application was lodged. Mr O'Grady stated that the applicant is a very genuine person, that she would make a good citizen and contribute to the laws of Australia. The Tribunal asked the applicant if he has any further information to added regarding the relationship at the time the visa applicant was lodged. He informed the Tribunal that he had nothing further to added and the Tribunal thanked him for his time. The Tribunal found Mr O'Grady to be a satisfactory witness.
46. Witness, Ms Thi Sau Duong is one of the applicant's best friends for around 5 years. She claimed that the sponsor loved the applicant and that his children make him upset. She claimed the sponsors came to her house and threatened to use a glass to hit his head and threatened to harm himself. The Tribunal asked the witness if she had anything further to add regarding the relationship. The witness provided no further information and the Tribunal thanked her for her time. The Tribunal did found Ms Thi Sau Duong not to be a credible witness.
47. Witness, Ms Thi T Hang Nguyen is one of applicant's best friends for around 5 years. Ms Nguyen claims the couple first met at her friend's house, Ms Quach, one of the other witnesses. She stated that she was invited and attend their wedding, that they are a loving couple and live together. She kept in touch with them after the wedding. As a couple they came to my house and when the sponsor was in hospital and the nursing home, she visited him. She stated that she was one of the last people to see the sponsor alive and that the applicant rang her when he died. She also attended the funeral of the sponsor and paid respect to him at the temple. The Tribunal thanks Ms Nguyen for her contribution to the matter and found her to be a satisfactory witness.
48. Witness, Ms Lai H. Hong the applicant's cleaner. Ms Hong informed the Tribunal that she did not know about the relationship or even the couple in 2017. She only got to know the couple in 2022 as she provided home care for the sponsor through her work for the Vietnamese Women's Association. She was paid to clean the home for the couple while the applicant

was at work. Ms Hong claims that the sponsor was always thinking about the applicant when she was cleaning the home. The Tribunal thanked Ms Hong contribution. The Tribunal did not find her oral witness statement relevant to this matter.

49. Witness, Ms Quach, a friend of the applicant, told the Tribunal that she was very sick at the time the visa application was lodged. According to the delegate's decision Ms Quach did submit a statement of support having only known the applicant for a relatively short period of time. She claimed that the sponsor was kicked out of his house by his family. The Tribunal found this statement not to be accurate as per evidence provided. Ms Quach claims the sponsor really cared for the applicant even when her visa was refused and told her to stay strong. The Tribunal did not find Ms Quach to be a credible witness.

50. Financial aspects of the relationship

51. The applicant informed the Tribunal that at time of application they did not have any joint ownership of assets or joint liabilities. The applicant lived with the sponsor in his housing commission unit at 39/45 Hall Street Moonee Ponds and that they had a joint CBA bank account. The applicant claimed that the sponsors Centrelink payments were paid into this account as was her salary. However, at the time the visa application was made the applicant was not working and she claimed to have used the sponsor's money for day to day living expenses. The applicant was not able to provide evidence to support this claim. The applicant claimed that the only time in which they pooled their financial resources was when they purchased two cars however no evidence of these claimed purchases was submitted to the Department as they were post the time of the visa application. Further to these claimed purchases no evidence was submitted to the Tribunal.
52. The applicant claimed that at the time the visa application made the only claimed legal obligations she owed to the other party was that of being the authorised correspondence nominee for Centrelink. The Tribunal notes that this only took affect on 23 February 2022 according to the evidence submitted to the Tribunal by the applicant and not at the time the visa application was made.
53. Although not at the time the visa application was lodged the Tribunal asked the applicant if she could explain the following significant withdrawals from the claimed CBA joint account. A copy of this statement dated 18 December 2020 and 12 February 2022 was submitted to the Tribunal by the applicant prior to the hearing. Between 18 December 2020 and 10 August 2021, the Tribunal noted that within 7 withdrawals the applicant withdrew \$58,300 from the joint account. At hearing the applicant claimed that these withdrawals were for individual expenses but was not able to provide any further explanation or evidence on what this money was used for. The Tribunal noted that as a result of these withdrawals the account was left with a very small balance.
54. Given the limited oral and physical evidence the applicant was able to provide the Tribunal and at the time the visa application was made the Tribunal was not satisfied that the financial aspects of the relationship demonstrated the applicant and sponsor were in a genuine and continuing relationship.

55. Nature of the household

56. Regarding the nature of the household the applicant informed the Tribunal that she and the sponsor had no joint responsibility for care and support of children. The applicant informed the Tribunal that she has a daughter from her first relationship and no children from her second relationship. The Tribunal notes that this was the applicant's third relationship. The sponsor has nine adult children born between 1958 and 1974. As mentioned earlier in this decision the applicant claimed that she has no contact or relationship with the sponsor's

children. The applicant claimed at hearing that since the death of the sponsor she claimed that she has more contact with the sponsor's children. If this were the case the Tribunal is of the view that at least one of the sponsor's nine children would have attended the hearing in support of the applicant or at least provided a letter of support. Given the applicant's consistent negative approach towards the sponsors nine children throughout the hearing and the written submissions prior to the hearing the Tribunal places little weight on the applicant's claims that she has developed some type of rapport with the sponsors nine children since his death. At the time the visa application was made it is clear to the Tribunal based on the evidence the applicant had no relationship with the sponsor's nine children to the extent that the sponsor's nine children did not even attend their father's wedding or wedding celebrations to the applicant.

57. The applicant claimed to have lived with the sponsor at 39/45 Hall Street Moonee Ponds when the visa application was made. The applicant informed the Tribunal at hearing that if she is not successful in gaining a positive outcome, she will need to move out of the housing commission home. The applicant claimed that she took care of all the responsibility for housework, except for some of the house cleaning and taking out the rubbish which was completed by the sponsor.
58. Given the limited amount of evidence presented and the time in which the couple claim to have lived together at the time the visa application was made the Tribunal does not accept that the couple meet the requirements of the nature of the household. Therefore, the Tribunal is not satisfied that the nature of the household is met and that as a couple you had established a genuine and continuing relationship.

59. Social aspects of the relationship

60. The applicant claimed at hearing that at the time of the visa application was lodged she and the sponsor would introduce themselves to other people as being a married couple. The applicant claimed that the opinion of her friends and acquaintances about the nature of the relationship was demonstrated by her friends attending the wedding and at the hearing as witnesses. She claimed that all the witnesses were supportive of the relationship. The Tribunal notes that many of the witnesses were primarily friends of the applicant. The applicant claimed as already discussed earlier in this decision that the sponsor's nine children were not supportive of the relationship and were not invited to the wedding. The applicant that at time the sponsor would hearing across to Footscray to see his children, but she did not go with him. The Tribunal notes that no evidence was submitted to support this claim by the applicant.
61. The Tribunal acknowledges several photographs of the couple together and with third parties, not family members, were submitted in a variety of locations. The applicant claims that their joint social activities consisted of them going to several Vietnamese community events, going to Centrelink together, taking the sponsor to the GP. The Tribunal does not consider these to be joint social activities. These outings are more in the form of the applicant being the sponsor's carer.
62. The Tribunal found during the hearing when the applicant was asked about the sponsor's nine children, she became rather aggressive, and her tone of voice changed. It became very apparent to the Tribunal that the applicant did not like or get along with the sponsor's children and she was not able to understand why the sponsor's children were concerned about the relationship. The Tribunal is of the view that the sponsor's nine children were genuinely concerned for the welfare of their father who after 65 years of marriage to their mother and both in their mid-80s, suddenly divorces their mother and marries the applicant, a woman some 37 years younger. At hearing the applicant claimed that the sponsor wanted nothing to do with his nine children as they were not supportive of the relationship. The

Tribunal does not accept that the sponsor did not want anything to do with his nine children. It would appear to the Tribunal that the applicant wanted the sponsor to have nothing to do with his nine children.

63. Based on the limited evidence provided, the Tribunal is not satisfied with the overall social aspects of the relationship. The Tribunal has genuine concerns about the applicant overall intentions, that being to gain a migration outcome through contriving a relationship with a vulnerable person, that being the sponsor, at the time the visa application was made. For these reasons the Tribunal places little weight on the social aspects of the relationship.

64. Nature of persons' commitment to each other

65. The applicant claimed at hearing that she first met the sponsor in May 2016 when she was in Australia on a multiple entry Tourist Visa and departed on 15 June 2016. During the time apart the applicant claims to have maintained communication with the applicant. On 3 March 2017 the applicant returned to Australia and stay for a period of 20 days before departing again on 23 March 2017. Given that the applicant claims to have first met the sponsor sometime in the month of May 2016 and departed Australia on 15 June 2016 the Tribunal places no weight on the applicant and sponsor developing any form of genuine relationship at this time. The Tribunal considers a new friendship may have developed but not a relationship. Added to this the sponsor was still married to his wife of 65 years.
66. The applicant claims that the sponsor proposed to her over the telephone on 26 June 2017 while she was travelling through Canada. Even if the sponsor did propose to the applicant on 26 June 2017 as claimed the sponsor was still married to his ex-wife of 65 years. Added to this at the time of the proposal the applicant and sponsor had only spent a limited time together in person. The sponsor's divorce from his ex-wife of 65 years was not finalised until 21 August 2017 and the applicant did finalise her divorce from her second husband until 20 September 2017.
67. On 4 November 2017 the applicant returned to Australia on her multiple entry Tourist Visa. 35 days later, on 9 December 2017 the applicant and sponsor signed the marriage certificate. No family members of the sponsor were invited or present at the signing of the marriage certificate. On 13 December 2017, the applicant submitted the Partner Visa application. Given the extremely limited time the applicant and sponsor had spent together in person prior to the engagement and the subsequent marriage on 9 December 2017 the Tribunal does not accept that the couple had had time to develop their friendship let alone a genuine relationship. The sponsor finalised his divorce from his ex-wife of 65 years on 21 August 2017 and then less than 4 months later married the applicant whom he had spent a limited time with, in person.
68. The applicant claimed that she saw the relationship with the applicant at time of application as a long term one. However, at the time the visa application was lodged the sponsor was nearly 85 years of age and the applicant nearly 48 years of age. The Tribunal further notes that the applicant's first husband was 64 years of age when they married, and she was nearly 34 years of age. The applicant's second husband was 72 years of age when they married, and she was nearly 44 years of age. The Tribunal notes that there is nothing wrong with partners having big age differences but in this instance the applicant on three occasions has married men a lot older than herself. The Tribunal does not accept given the age of the sponsor at the time the visa application was lodged and given the applicant's previous marriage history that the applicant saw this relationship as a long term one at time of application. Based on the applicants history the Tribunal does not accept that she meets the of s 5F(2)(b) and (c) at time of application.

69. The Tribunal is of the view that the applicant has entered this relationship at time when the sponsor was vulnerable having just divorced his wife of 65 years and manipulated / coerced the sponsor to have a negative, no existent, relationship with his nine adult children. The Tribunal does not accept that the sponsor's nine children wanted to have nothing to do with him. The Tribunal considers the sponsor's nine children and possibly his ex-wife of 65 years would have had genuine concerns about the ultimate intentions of the applicant and her desire to gain a migration outcome by entering a friendship / relationship at a time when the sponsor was most vulnerable. For these reasons the Tribunal places minimal weight on the nature of the persons' commitment to each other.
70. Based on the evidence, the Tribunal is satisfied the couple were married to each other under a marriage that is valid for the purposes of the Act. However, as clearly outline in this decision the Tribunal is not satisfied the couple had a mutual commitment to a shared life as a married couple to the exclusion of all others, that the relationship between them was genuine and continuing and that they do not live separately and apart on a permanent basis.
71. On the basis of the above the Tribunal is not satisfied that the requirements of s 5F(2) are met at the time the visa application was made.
72. Therefore, the applicant does not meet cl 820.211(2)(a).
73. For the reasons above, the applicant does not satisfy the criteria for the grant of the visa.

DECISION

74. The Tribunal affirms the decision not to grant the applicant a Partner (Temporary) (Class UK) visa.

M. Edgoose
Member

ATTACHMENT - Extract from Migration Regulations 1994

1.15A Spouse

- (1) For subsection 5F (3) of the Act, this regulation sets out arrangements for the purpose of determining whether 1 or more of the conditions in paragraphs 5F (2) (a), (b), (c) and (d) of the Act exist.
- (2) If the Minister is considering an application for:
 - (a) a Partner (Migrant) (Class BC) visa; or
 - (b) a Partner (Provisional) (Class UF) visa; or
 - (c) a Partner (Residence) (Class BS) visa; or
 - (d) a Partner (Temporary) (Class UK) visa;

the Minister must consider all of the circumstances of the relationship, including the matters set out in subregulation (3).

- (3) The matters for subregulation (2) are:
 - (a) the financial aspects of the relationship, including:
 - (i) any joint ownership of real estate or other major assets; and
 - (ii) any joint liabilities; and
 - (iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and
 - (iv) whether one person in the relationship owes any legal obligation in respect of the other; and
 - (v) the basis of any sharing of day to day household expenses; and
 - (b) the nature of the household, including:
 - (i) any joint responsibility for the care and support of children; and
 - (ii) the living arrangements of the persons; and
 - (iii) any sharing of the responsibility for housework; and
 - (c) the social aspects of the relationship, including:
 - (i) whether the persons represent themselves to other people as being married to each other; and
 - (ii) the opinion of the persons' friends and acquaintances about the nature of the relationship; and
 - (iii) any basis on which the persons plan and undertake joint social activities; and
 - (d) the nature of the persons' commitment to each other, including:
 - (i) the duration of the relationship; and
 - (ii) the length of time during which the persons have lived together; and
 - (iii) the degree of companionship and emotional support that the persons draw from each other; and
 - (iv) whether the persons see the relationship as a long term one.
- (4) If the Minister is considering an application for a visa of a class other than a class mentioned in subregulation (2), the Minister may consider any of the circumstances mentioned in subregulation (3).